remains the same as at common law.[17] But there are some jurisdictions which have held, in better reasoned if less widely followed decisions, that the classification of the crime according to its being committed in the course of another felony or with deliberate and premeditated malice indicates that the malice in the two classes is of a different degree, and that proof of the one kind will not satisfy an allegation of the other,[18] although it is admissible as evidence from which the other may be implied.[19]

INTERPRETATION OF THE WORD DEBT.—Despite the early origin of the action of debt,[1] and the large number of cases dealing with the subject, the meaning of the word is by no means settled.[2] Blackstone defined debt as "a sum of money due by certain and express agreement; where the quantity is fixed and specific, and does not depend on any subsequent valuation to settle it".[3] That the limitations of the action of debt have strongly affected the subsequent interpretations of the word seems to admit of little doubt. Debt would not lie except for a fixed and definite sum, or one easily ascertainable,[4] and this same limitation of certainty was formerly deemed a characteristic of the debt itself. Again, the action of debt was the proper one when the obligation arose from a judgment, and it is now almost universally held that a judgment is a debt. There seems to have been no hesitation about reaching this conclusion when the judgment arises *ex contractu*,[5] but some courts have refused to adopt this result where the judgment arises *ex delicto*.[6] The better view, however, was taken in the recent case of *Bronson* v. *Syverson* (Wash. 1915) 152 Pac. 1039, where it was held that a statute authorizing the arrest of a defendant in certain cases of tort was unconstitutional, as authorizing an imprisonment for debt, since a judgment resulting from a tort action was a debt

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[17]People *v.* Giblin (1889) 115 N. Y. 196, 21 N. E. 1062; State *v.* McGinnis (1900) 158 Mo. 105, 59 S. W. 83; Commonwealth *v.* Flanigan (Pa. 1844) 7 Watts & S. 415; Andrews *v.* People, *supra*. In Oklahoma, where the statute does not divide murder into degrees, but only classifies the kinds of murder, the court comes to the same conclusion by arguing that the statute merely describes the evidence by which murder may be proved. Holmes *v.* State (1911) 6 Okla. Cr. 541, 119 Pac. 430.

[18]Rayburn *v.* State (1901) 69 Ark. 177, 63 S. W. 356.

[19]Powell *v.* State (1905) 74 Ark. 355, 85 S. W. 781; State *v.* Weems (1895) 96 Iowa 426, 447, 65 N. W. 387.

[1]For the history of the action of debt, see Holmes, The Common Law, 251 *et seq.*; 2 Pollock and Maitland, History of English Law (2nd ed.) 203 *et seq.*

[2]Elliot, C. J., in The City of Valparaiso *v.* Gardner (1884) 97 Ind. 1, 6, says: "In view of the warring among the adjudged cases, it is not easy to affirm that the word 'debt' has a firmly settled meaning."

[3]3 Bl. Comm., *154. See also Bouvier's Law Dict.

[4]Perry, Common Law Pleading, 52.

[5]3 Bl. Comm., *160.

[6]Moore *v.* Green (1875) 73 N. C. 394; People *v.* Cotton (1853) 14 Ill. 414; but *cf.* People *v.* Greer (1867) 43 Ill. 213.

within the meaning of the constitution.[7] It is difficult to justify the opposite view, since the debt, if any, arises from the obligation imposed by the law to pay a fixed and definite sum, and is the same in all cases, regardless of the nature of the action. It might be argued that taxes should be listed in the same category, since there is an obligation imposed by the government to pay a definite sum. Some courts have taken this view,[8] while others hold that a tax acts *in invitum*, that it does not arise *ex contractu*, and is not a debt.[9]

Modern courts show a strong tendency to break away from the old rule which required a definite and certain sum to be due before a debt was created, and to hold that any liability constitutes a debt. This tendency is evidenced by those cases which hold that unliquidated claims arising *ex contractu* are debts.[10] In view of this radical step, it is not surprising to find authorities in support of the proposition that a claim for unliquidated damages, springing from a tort, is a debt,[11] though the weight of the decisions is against this extreme interpretation.[12] The New York Court of Appeals, however, has recently decided that interest to become due in the future is not a debt.[13] But the courts are at variance as to the nature of a claim for alimony.[14] Many of the cases expounding the meaning of the word have arisen in interpretations of provisions in statutes and constitutions limiting the power of a municipality to incur debts. Some courts construe the word strictly, and hold that a sum contracted to be spent in future years is not a present debt within the meaning of the word as used.[15] Others have reached the opposite conclusion, following the liberal interpretation, and as a result, have practically prohibited the munici-

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[7]Munson *v.* Genesee Iron Works (N. Y. 1899) 37 App. Div. 203, 56 N. Y. Supp. 139; Powell *v.* Oregonian Ry. (1888) 36 Fed. 726; *cf.* Detroit Post & Tribune Co. *v.* Reilly (1881) 46 Mich. 459, 9 N. W. 492; see Johnson & Stevens *v.* Butler (1856) 2 Iowa 535, 545.

[8]Haas *v.* Misner (1867) 1 Idaho 170, 177; State *v.* Hibbard (Ohio 1827) 3 Hammond 61; Felker *v.* Standard Yarn Co. (1889) 148 Mass. 226, 19 N. E. 220.

[9]Lane County *v.* Oregon (1868) 74 U. S. 71; Perry *v.* Washburn (1862) 20 Cal. 318; Jack *v.* Weiennett (1885) 115 Ill. 105, 3 N. E. 445; *cf.* City of Camden *v.* Allen (1857) 26 N. J. L. 398.

[10]New Haven Steam Saw-Mill Co. *v.* Fowler (1859) 28 Conn. 103; Mill Dam Foundry *v.* Hovey (1839) 38 Mass. 417, 454.

[11]Melvin *v.* State (1898) 121 Cal. 16, 53 Pac. 416; Latimer *v.* Veader (N. Y. 1897) 20 App. Div. 418, 46 N. Y. Supp. 823; Carver *v.* Braintree Co. (C. C. 1843) 2 Story 432, 447.

[12]Bolden *v.* Jensen (1895) 69 Fed. 745; Heacock *v.* Sherman (N. Y. 1835) 14 Wend. 58; Zimmer *v.* Schleehauf (1874) 115 Mass. 52; Manion *v.* Ohio Valley Ry. (1896) 99 Ky. 504, 36 S. W. 530; Holcomb *v.* Town of Winchester (1885) 52 Conn. 447; Cable *v.* McCune (1858) 26 Mo. 371.

[13]Continental Securities Co. *v.* N. Y. C. & H. R. R. R. (N. Y. 1916) 54 N. Y. L. J. 1717; Epping *v.* City of Columbus (1903) 117 Ga. 263, 43 S. E. 803.

[14]12 Columbia Law Rev., 638; see the recent case of Francis *v.* Francis (Mo. App. 1915) 179 S. W. 975.

[15]Swanson *v.* City of Ottumwa (1902) 118 Iowa 161, 169, 91 N. W. 1048; McBean *v.* City of Fresno (1896) 112 Cal. 159, 44 Pac. 358; Saleno *v.* City of Neosho (1895) 127 Mo. 627, 30 S. W. 190; Weston *v.* City of Syracuse (1858) 17 N. Y. 110; The City of Valparaiso *v.* Gardner, *supra;* Epping *v.* City of Columbus, *supra.*

palities from making even the most necessary public improvements.[16] In the recent case of *Jewell* v. *Nuhn* (Iowa 1915) 155 N. W. 174, the popular, instead of the technical meaning of the word was adopted. The court, after an exhaustive and able review of the authorities on the subject, decided that the amount embezzled by a share-holding secretary of a building and loan association constituted a debt to the association. Since the law will imply an assumpsit to repay the embezzled funds,[17] and since the amount thereof could be easily ascertained, the decision may be supported if one accepts the liberal construction of the word debt.

In view of the divergencies expressed by the cases, it would be futile to attempt to frame an all embracing definition of the word. Whether the court adopts the strict or the liberal interpretation seems to depend on all the circumstances involved. For instance, if the statute under consideration is penal in its nature, the word will be strictly interpreted.[18] On the other hand, if a constitution is involved, the courts are apt to avail themselves of the well known principle that such documents should be construed in their popular sense, and hence will adopt the liberal meaning of the word.[19] In some of the municipal debt cases, the courts are astute to learn whether the annual revenues are sufficient to cover the yearly liabilities arising from the contract, and where such appears to be the situation, the stricter view will be advanced, and the contract declared valid.[20] The intent of the legislature, as evidenced by the particular wording of the statute, will also be a determining factor.[21] Although the cases are greatly at variance, the general tendency seems to be toward the liberal interpretation of the word.

CONSTRUCTION OF REPUGNANT CLAUSES IN DEEDS UNDER MODERN DECISIONS.—The common law developed a number of rules, still of a certain degree of importance, which it applied to the interpretation of repugnant clauses in deeds. Of these rules, several have always been considered merely as rules of construction. Thus, it was held that the construction most beneficial to the grantee should be adopted.[1] Another was that the first of two repugnant clauses should prevail over the second,—an application of the old phrase that "the first deed

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[16]Read *v.* Atlantic City etc. (1887) 49 N. J. L. 558, 9 Atl. 759; but see s. c. (1888) 50 N. J. L. 665, 15 Atl. 10, where the court was evenly divided. Prince *v.* City of Quincy (1883) 105 Ill. 138; see Niles Water Works *v.* Mayor etc. of Niles (1886) 59 Mich. 311, 26 N. W. 525; Appeal of the City of Erie (1879) 91 Pa. 398.

[17]Admrs. of Dumond *v.* Carpenter (N. Y. 1808) 3 Johns, 183; Boardman *v.* Gore (1819) 15 Mass. 331; see Fagman *v.* Knox (1876) 66 N. Y. 525, 532.

[18]Cable *v.* McCune, *supra.*

[19]Epping *v.* City of Columbus, *supra.*

[20]City of Valparaiso *v.* Gardner, *supra*; see Appeal of the City of Erie, *supra.*

[21]See Melvin *v.* State, *supra*; Bolden *v.* Jensen, *supra*; Niles Water Works *v.* Mayor etc. of Niles, *supra*; Prince *v.* City of Quincy, *supra.*

[1]Esty *v.* Baker (1862) 50 Me. 325; Green Bay & Mississippi Canal Co. *v.* Hewett (1882) 55 Wis. 96, 12 N. W. 382.